

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SEP 28 2017

MICHAELIN BROOKE HALL,
PLAINTIFF BELOW, PETITIONER

vs.

No.)

17-0452

LONA SUE HALL, ROBERT EUGENE HALL,
LORETTA HALL (aka LORETTA JENKINS),
and SAMANTHA HAZEL WOOD,
DEFENDANTS BELOW, RESPONDENTS

BRIEF OF RESPONDENTS LONA SUE HALL
AND ROBERT EUGENE HALL

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STATEMENT OF THE CASE

PROCEDURAL HISTORY

This action began when plaintiff Kathy Hall French, as mother and next friend of Michaelin Brooke Hall filed suit, on February 26, 2016, against Respondents (Lona Sue Hall and Robert Eugene Hall) and others claiming that Michaelin Brooke Hall was the rightful heir to the estate of her biological father Michael Eugene Hall. (“Order Granting Defendants’ Motion for Summary Judgment,” included as Item “1” to the Apppendix, hereinafter referred to as “Order” at p. 4).¹ On January 11, 2017, an amended complaint was filed removing Kathy French Hall as Michaelin Brooke Hall had reached majority. (Order at p. 5). Present Respondents, the decedent’s parents, answered in a timely fashion. (Order at p. 5). Thereafter, the trial court considered the motions for summary judgment filed by both Petitioner and Respondents. On April 13, 2017, the trial court entered its “Order Granting Defendants’ Motion for Summary Judgment” ruling as a matter of law that Micahelin Brooke Hall does not have the right to inherit from the estate of Michael Eugene Hall through intestate succession because Mr. Hall’s parental rights had been terminated. (Order at pp. 11-14).

STATEMENT OF FACTS

The essential facts in this case are not in dispute. Decedent Michael Eugene Hall was the former husband of Kathy Hall French with whom he had one child, Michaelin Brooke Hall. (Order at p. 5). Lona Sue Hall and Robert Eugene Hall were Michael Eugene Hall’s parents. By order entered April 7, 2008 (noted April 17, 2008), upon the decedent’s voluntary

¹ The Appendix as filed by Petitioner does not comply with Rule 7(b) of the W.Va.R.App.P. because it does not contain single, sequential page numbers. Counsel for Respondent, therefore, identifies the document cited and references the page number from that document as contained in the circuit court record.

and knowing request, Mr. Hall's parental, custodial and guardianship rights were terminated as to Michaelin Brooke Hall. (Order at p. 5-6). Thereafter, Michael Eugene Hall was divorced from Kathy Hall French and had not remarried or had any other issue at the time of his death on April 3, 2011. (See Order at p. 6).

SUMMARY OF THE ARGUMENT

Because this Court has held that the termination of parental rights severs the parent/child relationship such that the terminated parent is no longer recognized as a "parent" under the law, the express statutory language concerning intestate succession precludes the child from taking as a "descendant."

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondents assert that oral argument pursuant to Rule 18 is not necessary as the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument.

ARGUMENT

I. STANDARD OF REVIEW

According to precedent from this Court, "[i]n reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review." *Phillips v. Fox*, 193 W.Va. 657, 661, 458 S.E.2d 327, 331 (1995)(citing *Burnside v. Burnside*, 194 W.Va. 263, 460 S.E.2d 264 (1995)). This appeal presents questions of law subject to de novo review.

II. THE CIRCUIT COURT CORRECTLY HELD THAT A CHILD MAY NOT INHERIT THROUGH INTESTATE SUCCESSION FROM HER PARENT AFTER THAT PARENT'S PARENTAL RIGHTS HAVE BEEN TERMINATED.

Because Michael Eugene Hall's parental rights were terminated as to Michaelin Brooke Hall, as a matter of law, she cannot recover from his estate through intestate succession.

West Virginia's statute concerning termination of parental rights clearly intends to end the parent/child relationship. West Virginia's statute provides that the Court shall:

...terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent...

W. Va. Code § 49-4-604. This Court has further described the result of termination of parental rights as precluding that person from being recognized as a "parent" under the law:

In light of our prior recognition of the effect of the revocation of a person's parental rights, we now hold that a final order terminating a person's parental rights, as the result of either an involuntary termination or a voluntary relinquishment of parental rights, completely severs the parent-child relationship, and, as a consequence of such order of termination, **the law no longer recognizes such person as a "parent" with regard to the child(ren) involved in the particular termination proceeding.**

In re Cesar L., 221 W. Va. 249, 258, 654 S.E.2d 373, 382 (2007)(emphasis added).

If the law no longer recognizes Michael Eugene Hall as the "parent" of Michaelin Brooke Hall, she cannot take pursuant to the intestate succession law because that law requires such a relationship in order to inherit. Specifically, §42-1-3 provides in relevant part that:

Any part of the intestate estate not passing to the decedent's surviving spouse under section three of this article, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(a) To the decedent's descendants by representation;...

In order to take pursuant to intestate succession, Michaelin Brooke Hall would have to be a “descendant” of Michael Eugene Hall. “Descendant” is defined as follows:

(5) “Descendant” of an individual means all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

W. Va. Code § 42-1-1. “Parent” is defined as follows:

(26) “Parent” includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent.

W. Va. Code § 42-1-1. Unquestionably, after termination of his parental rights, Michael Eugene Hall would not be entitled “to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.” The termination of his parental rights precludes such a possibility. Because he is no longer a “parent,” Michaelin Brooke Hall cannot be his descendant, because there is no relationship of “parent and child” as mandated by the definition. Thus, because pursuant to §42-1-1 Michael Eugene Hall is no longer a “parent” and Michaelin Brooke Hall is no longer his descendant, she cannot take pursuant to intestate succession.

The legislature could have provided for the possibility of a child of a parent whose rights have been terminated to take pursuant to intestate succession. The trial court noted that many surrounding States (Virginia, Kentucky, Tennessee, and North Carolina) expressly provide for such a possibility. (Order at 8-10).

Despite the clear statutory language in support of the trial court's ruling, Petitioner asserts that this Court should look to the Child Welfare Act to determine the legislature's intent with regard to the effect of termination of a parent's parental rights upon the intestate succession rights of that parent's child. (Petitioner's Brief at pp. 10-12). The Petitioner cites this Court's assertion that:

The plain language of the child welfare statute makes it clear that the Legislature's main goal is to assure the best interest of the child and recognize the child's fundamental rights.

In re Ryan B., 224 W. Va. 461, 466, 686 S.E.2d 601, 606 (2009). However, that is not the goal of intestate succession. If the "best interest" of the child was the goal of the intestate succession law, then the child would always take the entirety of the estate. But, that is not the case. §42-1-3, depending on the circumstances, gives all or a part of the estate to the surviving spouse. The trial court correctly noted that, instead of a "best interest of the child" analysis, intestate succession is used to effect the orderly distribution of estates.

Our laws concerning intestate succession are designed to effect the orderly distribution of property for decedents who lacked either the foresight or the diligence to make wills. The purpose of these statutes, then, is to provide a distribution of real and personal property that approximates what decedents would have done if they had made a will.

King v. Riffie, 172 W. Va. 586, 589, 309 S.E.2d 85, 87-88 (1983). Here, had the legislature intended for the orderly distribution to include a child to which the decedent parent's rights had been terminated, it could have done so expressly as other jurisdictions have done.

Importantly, other provisions of state law also provide that when the parent/child relationship is severed, the child is ineligible to take pursuant to intestate succession. West Virginia's adoption statute provides:

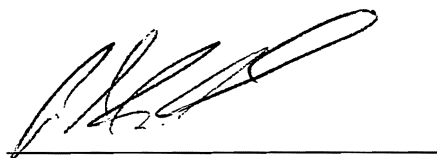
- (b) For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, **but such child shall not inherit from any person entitled to parental rights prior to the adoption nor their lineal or collateral kindred**, except that a child legally adopted by a husband or wife of a person entitled to parental rights prior to the adoption shall inherit from such person as well as from the adopting parent. If a legally adopted child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this State, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

W. Va. Code § 48-22-703 (emphasis added).

The trial court correctly analyzed this issue and the current law does not allow Petitioner to take by intestate succession.

CONCLUSION

For all these reasons, Respondent respectfully requests that this Court affirm the trial court's decision.



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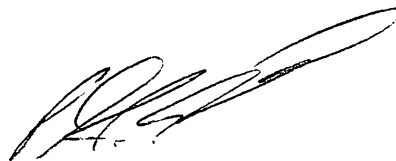
RESPECTFULLY SUBMITTED,
LONA SUE HALL AND ROBERT EUGENE
HALL, RESPONDENTS
BY COUNSEL.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have on this the 27th day of September, 2017 served a true copy of the foregoing "BRIEF OF RESPONDENTS LONA SUE HALL AND ROBERT EUGENE HALL" upon the following:

William H. Sanders, III
320 Courthouse Road
Princeton, WV 24740

by placing a true copy thereof in the United States Mail, postage prepaid, to the above-named person.

A handwritten signature in black ink, appearing to read "P. R. Cassell", is written over a horizontal line.

Paul R. Cassell